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09/776,130	02/02/2001	Dimitra G. Gerogianni	020431.0739	93365
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Booth Udall, PLC			SAETHER, FLEMMING	
1155 W Rio Salado Parkway				
Suite 101			ART UNIT	PAPER NUMBER
Tempe, AZ 85281			3677	
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary	Application No. 09/776,130	Applicant(s) GEROGIANNI, DIMITRA G.
	Examiner Flemming Saether	Art Unit 3677

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If no period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(o).

Status

1) Responsive to communication(s) filed on 20 January 2010.

2a) This action is **FINAL**. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1-8,10-18,20-31 and 33-37 is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) Claim(s) _____ is/are allowed.

6) Claim(s) 1-8,10-18,20-31 and 33-37 is/are rejected.

7) Claim(s) _____ is/are objected to.

8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some * c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. _____.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) Notice of References Cited (PTO-892)

2) Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) Information Disclosure Statement(s) (PTO/SE/03)
Paper No(s)/Mail Date _____

4) Interview Summary (PTO-413)
Paper No(s)/Mail Date: _____

5) Notice of Informal Patent Application
6) Other: _____

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-8, 10, 11, 13-18, 20, 21, 23-31, 33, 34, 36 and 37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cupps (US 5,991,739) in view of Altschuler (US 6,330,554), Hanson (US 4,971,409), and Harrington (US 5,895,454). Cupps discloses the general concept and system of brokering food orders over the Internet wherein a plurality of buyers have access to a database of a plurality of unaffiliated restaurants that deliver food (Fig. 1 and 7). Each of the buyers inputs their location and the broker displays restaurants that deliver to that location and indicates specials (Fig. 8). Each of the restaurants displays a menu of available food items and price (Fig. 9), any one of which may be considered "special". Once an item is found, the buyer initiates a transaction and is given a response or confirmation from the restaurant which includes a delivery time (column 11, line 26-27). The delivery time is real time and inherently would include any backlog on the part of the seller since the seller is the one providing the delivery time (column 11, line 11-12).

Cupps does not disclose to include a restaurant ratings preference. Altschuler discloses a system using the internet wherein a restaurant's rating is provided to the user in addition to the other criteria (Fig. 8; column 18, line 25-32 and; column 21, lines 39-44). At the time the invention was made, it would have been obvious for of ordinary

skill in the art to provide the system Cupps with a restaurant rating in addition to the other criteria as disclosed in Altschuler because the rating information would provide the buyer additional information to help in determining which restaurant to buy from.

Modified Cupps does not disclose the real time delivery time being provide prior to a selection be made by the customer. Hanson discloses a food order and delivery system wherein the real time delivery time, based at least in part on actual deliveries, is communicated to the customer as a transaction is being made (column 16, line 64-68) so the customer can take that into account prior to placing an order. At the time the invention was made, it would have been obvious for one of ordinary skill in the art to communicate the real time delivery time to the customer in Cupps prior to the order being placed so that the customer could make a more informed decision.

Modified Cupps does not disclose the real time delivery time communicated to the customer prior to a transaction being initiated. Harrington discloses a system using the internet where in addition to other criteria such as price etc... the delivery time is included to the customer in a hierarchical scheme, in other words rank, from a plurality of sellers for comparison to the customer so that a determination on purchasing an item can be based on the delivery time (column 5, lines 25-61) and teaches to include a maximum delivery time preference (column 5, line 26-27). Harrington further teaches to provide alternatives to the customer if the criteria is not met (column 6, lines 4-9) and also teaches that the user can include reference information which may include a desired price range (column 5, line 49) in addition to other relevant data (line 50) which in the restaurant application would include the rating as discussed above. The price

range would inherently include a minimum and maximum price. Additionally, Harrington teaches the system to include availability information (column 4, line 41) which in the restaurant application would inherently include shortages of food items or ingredients because are the factors which would effect availability. At the time the invention was made, it would have been obvious for the person of ordinary skill in the art to communicate the real time delivery time and availability to the customer in modified Cupps in a manner as disclosed in Harrington so that delivery time could be used by the customer as criteria for determining which food item to order before beginning any transaction. Additionally, it would have been obvious for the buyer to include preferences such as the price range so that time is not wasted considering unwanted options.

Claims 12, 22 and 35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cupps (US 5,991,739) in view of Altschuler (US 6,330,554), Hanson (US 4,971,409), and Harrington (US 5,895,454) as applied to claims 1, 13 and 24 above and further in view of Cotter (US 4,797,818). Cotter teaches the selection of a restaurant or seller for a delivery order automatically based on real time delivery time (column 2, line 21-31). At the time the invention was made, it would have been obvious for one of ordinary skill in the art to provide for the automatic selection of a seller in modified Cupps based on real time delivery time as disclosed in Cotter in order to save time to the customer.

In response to Remarks

After consideration of applicant's remarks, the rejection remains unchanged.

Applicant argues that the applied art, does not disclose "one or more databases comprising ... real-time availability information identifying particular food items available from each of a plurality of unaffiliated sellers, real-time availability information reflecting a current shortage of one or more particular food item available from one of more of the plurality of unaffiliated sellers". Applicant particularly addresses the references to Cupps (US Patent 5,991,739) Camaisa (US Patent 5,845,260). In response, neither Cupps nor Camaisa were relied upon to teach the argued features as they were only included in the "In response to Remarks" section as alternative references which may be applicable. Therefore, while the arguments are not agreed with, the examiner finds no reason to reply to the arguments at this time.

As discussed in page 4, lines 4, of the previous office action, "Harrington teaches the system to include availability information (column 4, line 41) which in the restaurant application would inherently include shortages of food items or ingredients because [those] are factors which would affect availability". Harrington teaches that information as to the availability of a particular item from a plurality of sellers (12 a-f) which inherently would reflect a current shortage since it a shortage that would affect the availability. In other words if there is a shortage the item would be unavailable. While Harrington is not specifically concerned with food items, it is applied in combination with Cupps as a modifying reference and since Cupps already teaches a system of

brokering food items Harrington is modifying the system of brokering food items by adding the availability as part of the database information and a discussed above the availability would have to reflect any shortages.

Again, the examiner does not concede that Cupps and Camaisa also disclose the same availability teaching but to simply the issues it will not be addressed at this time since neither has been relied upon for such a teaching as it is already taught in Harrington as discussed above.

Applicant again argues that the examiner's conclusionary statements are not sufficient to support the findings of obviousness. In response, the rational for the combination has been explained in the previous office actions and it does not warrant any further explanation. Applicant does not address the explanations which were provided at applicant's request in support of the conclusionary statements as previously argued. Applicant should review the previous office actions for the additional explanations in support of the combination in particular the responses in the office actions mailed 8/03/2007, 1/16/2008 and 6/30/2008 where the rational for the combination has been further explained and the office actions of 8/03/2007, 6/30/2008 and 7/1/2009 which specifically reference KSR rational. Also, applicant does not provide any evidence or facts as to why the combination would not have been obvious.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Flemming Saether whose telephone number is 571-272-7071. The examiner can normally be reached on Monday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Victor Batson can be reached on 571-272-6987. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Flemming Saether
Primary Examiner
Art Unit 3677

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